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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	)	No. P1300CR20081339
	)	
Plaintiff,	)	Div. 6
	)	
vs.	)	REPLY IN SUPPORT OF
	)	MOTION TO PRECLUDE LATE
STEVEN CARROLL DEMOCKER,	)	DISCLOSED EVIDENCE
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

22 The State's response does not deny that the specific disclosures made to the  
23 defense on March 4 and 5, 2010 were known to the State well before the disclosures  
24 were made or the information requested or that the State failed to exercise due diligence  
25 to request and disclose the evidence to the defense. The State has not offered any good  
26 cause for its failure to exercise due diligence. The State's response also does not deny

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

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JEANNE HICKS, CLERK

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BY: \_\_\_\_\_

1 that late disclosure has prejudiced the defense's ability to prepare for trial. The State  
2 rightfully notes that the Court must consider less stringent sanctions, but proposes no  
3 alternative sanction and, at this late date, with trial now less than six weeks away, the  
4 defense knows of no such alternatives. For these reasons this Court should preclude this  
5 late disclosed evidence.

6 As an additional or alternative sanction, as briefed in the supplemental motion on  
7 sanctions, the Court should dismiss the death penalty to ameliorate the cumulative  
8 prejudicial effects of the State's continuing disclosure violations in this case.

9 **1. Account Records for Account ending in 2663 JP Morgan Chase**

10 The States' response goes on for nearly two pages but does not deny that  
11 information for the JP Morgan Chase account ending in 2663 was known to the State in  
12 June 2009 but not disclosed until March of 2010. The State offers no explanation. The  
13 fact that this information is useful to the State is not an excuse for its incompetence and  
14 the resulting prejudice to the defense of repeated late disclosures impeding the defense  
15 ability to prepare a defense, review the evidence, interview State's witnesses and  
16 prepare defense witnesses. The State offers no alternative to preclusion. With six  
17 weeks to trial the defense is not aware of an alternative sanction that would address the  
18 prejudice to the defense. This evidence should be excluded pursuant to Rule 15.7.

19  
20 **2. Subpoena for Girard Phone records of activity from June 17 – June 21,**  
21 **2009**

22 The State's response also acknowledges that information related to the alleged  
23 relevance of Ms. Girard's phone records was known to them "[i]n mid 2009" but offers  
24 no explanation for its failure to disclose the information until March 2010 to the  
25 defense. The State acknowledges it has a continuing duty to make additional  
26 disclosures and yet fails to address its failure to do so in a timely manner with respect

1 endless evidence. The State offers no alternative to exclusion as a sanction. This  
2 information was not timely disclosed pursuant to Rule 15.7 and should be excluded.  
3

4 **3. Outdoor Pro Link Information and Request to FBI (18723-24, 18880-**  
5 **18881, 18913)**

6 The State's response fails to address the questions about when it received  
7 information regarding Outdoor Pro Link and La Sportiva shoes and when it disclosed  
8 this information to the defense. The State withheld this information from the defense  
9 for *five months*. All of this information relates to the witnesses, information,  
10 investigation and report that the State had since at least October 2009 and did not  
11 disclose until February of 2010. During the time this information was withheld the  
12 defense could have been conducting its own investigation and analysis but was  
13 prohibited from doing so by the State's withholding of evidence. The State has also  
14 now requested additional testing by the FBI and identified for the FBI a disclosure  
15 deadline of April 5. The State has provided shoes to the FBI that are not the shoes in  
16 question and no such similar shoes have been provided to the defense. The FBI has not  
17 identified the sole of the shoe Mr. DeMocker is alleged to have purchased as  
18 "matching" the shoe print at the scene of the crime. The State's overstating of the  
19 nature and value of this evidence is matched only by its understating the effects of its  
20 continued disclosure violations.

21 This evidence should be excluded based on the State's withholding of evidence  
22 while the issue was being litigated before the Court and given the State's interference  
23 with the defense's ability to investigate the case. The State has offered no alternative to  
24 preclusion.

25 **4. Chase Bank Information re account ending in 9408 (18770-28854)**

26 The State's response does not address that it knew of information in November  
27 of 2008 relating to Chase account ending in 9408 but did not disclose this information  
28

1 to the defense until March of 2010. The State offers no explanation for its failure to  
2 request this information until over a year after the account was known. This  
3 information should be excluded pursuant to Rule 15.7.

4 **5. UBS Resource Account ending in 6347**

5 The State's response does not address that it was aware of the UBS account  
6 ending in 6347 in November of 2009 but did not disclose it to the defense until March  
7 of 2009. The State has now disclosed the CD to the defense. This information should  
8 be excluded pursuant to Rule 15.7 based on the State's failure to timely investigate and  
9 disclose. The State offers no alternative to preclusion.

10 **8. Emails between Mr. DeMocker and info@enjoyprescott (18953-18957)**

11 The State's response that the information in its possession since September 2008  
12 was with a detective "who has has little involvement with the case" is irrelevant to its  
13 obligations under Rule 15.1 The disclosure rules do not depend on who possesses the  
14 information and the State is responsible for disclosing information in the possession of  
15 its agents.

16 The permitted sanctions under Rule 15.7 include precluding or limiting the  
17 calling of a witness, use of evidence or argument; dismissing a case; granting a  
18 continuance or declaring a mistrial; holding counsel in contempt; imposing costs; or  
19 other appropriate sanctions. At this late date, with only weeks to trial, the State has  
20 offered no alternative sanctions and the defense is aware of no alternative that would  
21 address the ongoing and severe prejudice created by the State's continued and ongoing  
22 violations. This Court should exclude the late disclosed evidence based on the pattern  
23 of conduct evidenced by the State in this case.

24 **CONCLUSION**

25 Defendant Steven DeMocker, by and through counsel, hereby requests that this  
26 Court prohibit the State from offering late disclosed evidence as described above.

1  
2 DATED this 25<sup>th</sup> day of March, 2010.

3  
4 By: 

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14 **ORIGINAL** of the foregoing hand delivered for  
15 filing this 25<sup>th</sup> day of March, 2010, with:

16 Jeanne Hicks  
17 Clerk of the Court  
18 Yavapai County Superior Court  
19 120 S. Cortez  
20 Prescott, AZ 86303

21 **COPIES** of the foregoing hand delivered this  
22 this 25<sup>th</sup> day of March, 2010, to:

23 The Hon. Thomas B. Lindberg  
24 Judge of the Superior Court  
25 Division Six  
26 120 S. Cortez  
27 Prescott, AZ 86303

28 Joseph C. Butner, Esq.  
Yavapai Courthouse Box